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Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-5215

IN THE MATTER OF
ANGELA MARIE OTIS, et al.,
Alleged Neglected Dependent Children

RESPONDENT'S BRIEF FOR DENYING A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

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REASON FOR DENYING THE WRIT

1. THE DECISION OF THE SUPREME COURT OF OHIO WAS BASED ON STATUTORY INTERPRETATION OF THE OHIO REVISED CODE.

The petitioner's argue that the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Consitution were violated by the denial of petitioner's request for a free transcript and court appointed attorney. Although these issues were raised on the appellate level the Supreme Court of Ohio had adequate state ground to determine this issue.

Section 2151.352 of the Ohio Revised Code states:

> "A child, his parents, custodian or other person in loco parentis of such child is entitled to representation by legal counsel at all stages of the proceedings and if, as an indigent person, he is unable to employ counsel, to have counsel provided for him pursuant to Chapter 120 of the Revised Code." (for full text of statute, see A-1).

The Supreme Court of Ohio on September 20, 1978 and May 18, 1979 dismissed petitioner's appeals for lack of a substantial constitutional question. Neither dismissal was accompanied by a written opinion. However, it can be presumed that Court was fully aware of the Ohio Statute as well as petitioner's claim.

It is a well-established principle that before the Supreme Court will review a decision of a state court, it must affirmatively appear from the record that the federal question was presented to the highest court of the state having jurisdiction, and that its decision of the federal question was necessary to its determination of the cause. See U.S. ex rel. Herge v. Com. of Pa. D.C. Pa1950, 89 F. Supp 636.

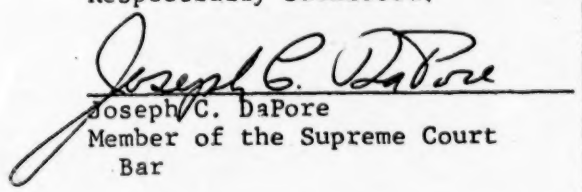
In addition to the requirement that the federal question was necessary for the determination of the case, where the state decision might have been either state or federal ground and the state ground is sufficient to sustain the judgment, the United States Supreme Court will not review the decision. U.S. ex rel Herge v. Com. of Pa. D.C. Pa 1950, 89 F. Supp 636.

If the Court would grant the Writ, it would necessarily involve the interpretation of the Ohio statute which should properly be left to the Supreme Court of Ohio.

CONCLUSION

For the reasons stated above, a writ of certiorari should be denied.

Respectfully submitted,



Joseph C. DaPore
Member of the Supreme Court Bar

APPENDIX A

Section 2151.352 Right to counsel.

A child, his parents, custodian, or other person in loco parentis of such child is entitled to representation by legal counsel at all stages of the proceedings and if, as an indigent person, he is unable to employ counsel, to have counsel provided for him pursuant to Chapter 120. of the Revised Code. If a party appears without counsel, the court shall ascertain whether he knows of his right to counsel and of his right to be provided with counsel if he is an indigent person. The court may continue the case to enable a party to obtain counsel or to be represented by the county public defender or the joint county public defender and shall provide counsel upon request pursuant to Chapter 120. of the Revised Code. Counsel must be provided for a child not represented by his parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

Section 2935.14 of the Revised Code applies to any child taken into custody. The parents, custodian, or guardian of such child, and any attorney at law representing them or the child, shall be entitled to visit such child at any reasonable time, be present at any hearing involving the child, and be given reasonable notice of such hearing.

Any report or part thereof concerning such child, which is used in the hearing and is pertinent thereto, shall for good cause shown be made available to any attorney at law representing

such child and to any attorney at law representing the parents, custodians, or guardian of such child, upon written request prior to any hearing involving such child.